

## Message Text

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ACTION EA-09

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FM AMEMBASSY KUALA LUMPUR  
TO SECSTATE WASHDC 4344

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E.O. 11652: N/A  
TAGS: AMGT PC  
SUBJ: TAX REFUND ON GASOLINE FOR PEACE CORPS OFFICIAL VEHICLES

1. GOM FAILURE TO ABIDE BY PROVISIONS OF AGREEMENT BETWEEN THE MINISTRY OF AGRICULTURE AND THE U.S. BUREAU OF RECLAMATION HAS PROMPTED AN EXAMINATION OF TAX EXEMPTION FOR OTHER U.S. GOVERNMENT EXPENDITURES IN MALAYSIA. WE HAVE DETERMINED THAT SINCE 1966 THE MALAYSIAN GOVERNMENT HAS NOT REFUNDED THE TAX PAID ON GASOLINE USED BY PEACE CORPS IN ITS OFFICIAL VEHICLES.

2. OUR FILES REVEAL THE FOLLOWING HISTORY. THE AGREEMENT BETWEEN THE UNITED STATES AND MALAYA ON THE PEACE CORPS PROGRAM WAS EFFECTED BY AN EXCHANGE OF NOTES ON SEPTEMBER 4, 1961. IN IT THE GOVERNMENT OF MALAYA UNDERTOOK TO "EXEMPT FUNDS, EQUIPMENT, MATERIALS AND SUPPLIES, FURNISHED BY OR FINANCED BY THE GOVERNMENT OF THE UNITED STATES AND USED IN CONNECTION WITH THE PEACE CORPS PROGRAMS FROM TAXES, INVESTMENT OR DEPOSIT REQUIREMENTS, CURRENCY CONTROLS, AND FROM CUSTOMS DUTIES, CHARGES OR OTHER FEES." BETWEEN THE DATE OF AGREEMENT AND MAY 1966 THE MALAYSIAN GOVERNMENT REFUNDED GASOLINE TAXES FOR PEACE CORPS OFFICIAL VEHICLES. SINCE THAT DATE IT HAS NOT DONE SO. IN 1970 AND 1971 THE EMBASSY RAISED THE MATTER WITH THE MALAYSIAN GOVERNMENT IN A SERIES OF DIPLOMATIC NOTES AND ORAL APPROACHES. THESE EFFORTS CONTINUED WITHOUT RESPONSE FROM THE MINISTRY OF FOREIGN AFFAIRS

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FOR MORE THAN TWO YEARS. FINALLY ON OCTOBER 30, 1971, THE MINISTRY

OF FOREIGN AFFAIRS IN A SHORT NOTE SAID SIMPLY THAT THE REQUEST FOR GASOLINE TAX REFUND FOR OFFICIAL U.S. GOVERNMENT VEHICLES UTILIZED FOR OFFICIAL PURPOSES FOR THE PEACE CORPS PROGRAM COULD NOT BE ACCEDED TO. NO EXPLANATION OR JUSTIFICATION WAS OFFERED. OUR RECORDS SHOW NO FURTHER CORRESPONDENCE, AND WE ASSUME THEREFORE, THAT THIS REFUSAL WAS ACCEPTED.

3. WE HAVE IN OUR BUDGET AND FISCAL RECORDS VOUCHERS FOR PEACE CORPS EXPENDITURES FOR GASOLINE COVERING THE PERIOD FROM APRIL 1974 THROUGH MAY 1976, A PERIOD OF 25 MONTHS. DURING THAT TIME WE PAID IN TAXES M\$17,777.10 (US\$7,145.14).

4. WE SHOULD LIKE TO RAISE THIS MATTER FORMALLY WITH THE MALAYSIAN GOVERNMENT AGAIN. THE GOM IS IN VIOLATION OF THE AGREEMENT. GASOLINE IS CLEARLY IN THE CATEGORY OF MATERIALS OR SUPPLIES, AND IS BEING FINANCED BY THE U.S. GOVERNMENT. IF WE OPEN THIS MATTER AGAIN, HOWEVER, WE SHOULD BE PREPARED TO PURSUE IT TO A CONCLUSION. BASED ON PAST EXPERIENCE AND THE ATTITUDE OF THE MALAYSIAN GOVERNMENT, -- PARTICULARLY THE MINISTRY OF FINANCE, IN A RANGE OF OTHER NEGOTIATIONS, A FLAT TURNDOWN WITHOUT REASONS OR JUSTIFICATION IS PREDICTABLE. TO FORESTALL THIS WE WOULD BRING THE MINISTRIES BENEFITTING FROM THE PROGRAM INTO THE ISSUE, AND ATTEMPT TO INSPIRE STRONG PRESSURE ON THE MINISTRY OF FINANCE TO AGREE TO OUR REQUEST. TO DO SO WE WOULD HAVE TO MAKE CLEAR THAT WE CONSIDER A FUNDAMENTAL PRINCIPLE INVOLVED, AND WERE PREPARED TO TERMINATE THE PROGRAM IF THE GOM PERSISTED IN ITS REFUSAL TO HONOR THE AGREEMENT.

5. CONSIDERING THE RELATIVELY SMALL AMOUNTS OF MONEY INVOLVED (US\$3,500 A YEAR), IT MIGHT BE ARGUED THAT WE SHOULD ACT AT THIS POINT, AFTER A DECADE OF ACQUIESCENCE, MAKE AN ISSUE OF THE GASOLINE TAX REBATE. WE BELIEVE, HOWEVER, WE SHOULD DO SO FOR THE FOLLOWING REASONS:

A. THE AGREEMENT PROVIDES FOR THIS EXEMPTION. A BASIC PRINCIPLE OF THE VALIDITY OF CONTRACTS IS INVOLVED. THERE IS A TENDENCY HERE AND ELSEWHERE IN SOUTHEAST ASIA TO SEE SUCH CONTRACTS AS BINDING ONLY ON US. WE SPEAK FREQUENTLY OF OUR DETERMINATION TO ABIDE BY OUR COMMITMENTS. WE SHOULD HOLD LIMITED OFFICIAL USE

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OUR SOUTHEAST ASIAN FRIENDS TO THEIRS. IT IS IMPORTANT TO THE WHOLE STRUCTURE OF OUR RELATIONSHIP. IF WE DO NOT, WE ENCOURAGE FUTURE REPUDIATION AND NON-OBSERVANCE ON MATTERS OF MORE CONCERN TO US.

B. AS A MATTER OF EQUITY, WE SHOULD NOT BE TAXED FOR OFFICIAL COSTS OF A PROGRAM OF VOLUNTEER ASSISTANCE TO MALAYSIA.

C. THE UNITED STATES HAS DERIVED SIGNIFICANT BENEFITS FROM FIFTEEN YEARS OF ASSOCIATION AND COLLABORATION BETWEEN THE MALAYSIAN PEOPLE AND OUR VOLUNTEERS. THERE IS NO QUESTION, HOWEVER, THAT IN THE RELATIONSHIP MALAYSIA HAS BEEN THE PRINCIPAL BENEFICIARY. IF THE PROGRAM MEANS AS MUCH TO THE GOM AS THE ECONOMIC PLANNING UNIT AND THE RECEIVING MINISTRIES PROCLAIM, THEY SHOULD BE READY TO INTERCEDE WITH THE MINISTRY OF FINANCE TO SAVE THE PROGRAM. IF THEY DO NOT, WE HAVE A CLEARER PICTURE OF THE TRUE VALUE THEY ATTACH TO IT.

6. WE BELIEVE THAT THE GOM WILL ACCEPT OUR POSITION BUT FEEL THAT WE CAN ACCEPT THE RISK THAT IT MAY NOT. IF FORCED TO TERMINATE, WE WOULD FAVOR A PROCESS IN WHICH ALL RECRUITMENT WAS STOPPED IMMEDIATELY, AND THE PROGRAM BE ALLOWED TO PHASE OUT GRADUALLY WITH THE DEPARTURE OF VOLUNTEERS FROM THEIR PRESENT ASSIGNMENTS. MALAYSIA IS REACHING THE POINT WHEN IT CAN AFFORD TO CONTRACT COMMERCIALLY FOR THE SERVICES NOW BEING PROVIDED UNDER HIGHLY CONCESSIONAL TERMS BY THE PEACE CORPS. WE HAVE SAID THAT WE ARE PLANNING TO PHASE OUT THE PROGRAM WITH THE END OF THE THIRD FIVE-YEAR PLAN IN 1980. WE SEE NO SERIOUS OR LASTING ADVERSE CONSEQUENCES TO U.S. MALAYSIAN RELATIONS BY PHASING OUT THE PROGRAM A FEW YEARS EARLIER.

7. WE PROPOSE, THEREFORE, TO REQUEST BY DIPLOMATIC NOTE A REFUND OF THE TAX PAID OVER THE PAST TWO YEARS WHICH WE CAN SUBSTANTIATE WITH VOUCHERS ON FILE, AND AN ASSURANCE THAT A TAX REFUND WILL BE MADE ON FUTURE PURCHASES. IN PRESENTING THE NOTE WE WOULD ADD ORALLY THAT IF THE GOM IS NOT PREPARED TO HONOR THE SEPTEMBER 1961 AGREEMENT, THE USG IS PREPARED TO GIVE NOTICE OF TERMINATION OF THE PROGRAM AS PROVIDED FOR IN THE FINAL PARAGRAPH OF THE AGREEMENT. DEPARTMENT'S LIMITED OFFICIAL USE

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AUTHORIZATION TO PROCEED ALONG THESE LINES IS REQUESTED.

8. PEACE CORPS MALAYSIA DIRECTOR, ROBERT GRAULICH, IS PRESENTLY IN WASHINGTON. PLEASE PASS THIS MESSAGE TO HIM. UNDERHILL

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## Message Attributes

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